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Evolution And Dynamic Nature Of Law In Contemporary Society

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ABSTRACT :

Law is a set of rules which govern the members of society and are enforced by the courts. Everyone defines the three-letter word differently. While making and interpreting the law, it is pertinent to keep our eyes and ears open to adapt to the ever-changing needs of our society. Legal requirements also vary based on ties between people, community demands, and situations. This article first discusses the jurisprudence theory related to the dynamic nature of law, given by HLA Hart. Further, it discusses the history of the evolution of law in India. The Constitution made a significant change in the system's trajectory, which was first created to support colonial and imperial interests in India. The Constitution particularly aims to strengthen society's weakest members, and judicial interpretation serves this objective. Finally, the article analyses the law's evolution and dynamic nature through various contemporary interpretations of the law by the Indian judiciary. For instance, the recent ruling of the Supreme Court, where it was held that all women, regardless of their marital status — unmarried or married or single or in live-in relationships, sexual orientation, or other characteristics, are entitled to safe and legal abortion. Following this, in another laudable judgment, the court deemed "modern and atypical" kinds of familial units, such as same-sex couples, single-parent households, remarried households with children from prior partnerships, and live-in relationships, to be worthy of constitutional safeguards.

INTRODUCTION :

Law is affected by space and time. Common conduct in one place may be a felony in another. Distinct laws are governed by different norms because different cultures have different punishments for various offences. Every nation has a different system for dealing with crimes. For example, the United States has significantly more convoluted gun legislation, with each state having its own set of rules. In addition, purchasing a gun in the US is exceedingly simple and rapid, almost in contrast to India¹. The constitution must be modified throughout time to revise clauses that are insufficient to address evolving needs. Otherwise social realities and political requirements over time cannot be reflected in the constitution's text. For instance, Section 377 was a crime in India before it was declared unconstitutional and made legal in September 2018.² In other words, we can say that what is legal now may become illegal tomorrow. This is what gives law its dynamic aspect.

HLA Hart's Theory Of Law: Primary and Secondary Rules :

¹Anay Mridul, Buying guns: How does India compare with the US?, cnbctv18 (Aug. 19, 2022), <https://www.cnbctv18.com/legal/buying-guns-how-does-india-compare-with-the-us-4216241.htm>.

² Navtej Singh Johar v. Union of India, 10 SCC 1 (SC 2018).

Herbert Lionel Adolphus was an influential legal jurist. In his most famous work “*Concept of Law*” he mentioned that laws can be divided into various logical categories, each of which serves a certain legal and social purpose. Primary rules of obligation govern how people behave in society. The members of society are subject to these rules, which may confer privileges or impose obligations. On the other hand, secondary rules of obligation describe how and by whom the fundamental rules may be created, acknowledged, modified, or repealed. Thus, duty-imposing rules impose obligations and power-conferring rules impart authority.

A system that only contains primary rules and no secondary rules would not be fault-free. This would be known as a system of customary law. Some actions might be compulsory, while others would be frowned upon. However, there would be no mechanism for altering the list of obligations.³ The flaw with "the primary laws of obligation" is that they are static in nature. In such a society, there is neither a mechanism to change the position that the basic rules generate nor a way to consciously modify the rules to changing conditions, either by eliminating outdated regulations or by enacting new ones.⁴

Secondary rules of change define the process for modifying primary rules by empowering specific individuals to enact new regulations governing how members of that community should behave and to repeal the preexisting regulations. In our society, secondary rules coexist with primary rules, demonstrating the fluid nature of law.

Evolution Of Law In India: A Brief Historical Overview :

India's legal system has developed from religious prescription to the current constitution and legal framework, passing through common law and secular legal systems along the way. India's journey of legal systems started during the Vedic period. The civil law system may have been in place since the Indus valley civilization and the bronze age. India has a long history of using philosophical and religious teachings to influence the law. India's secular laws differed greatly from one region and one monarch to another. Many of the ancient Indian dynasties' defining characteristics included court systems for both civil and criminal cases. The Mauryas (321–185 BCE) and the Mughals (16th–19th century) both had excellent secular court systems, with the latter giving rise to the common law system we use today.

With the advent of colonization in India, a system of laws based on judicial precedents called the common law system was introduced. King George I granted the corporation a license in 1726 to create "Mayor's Courts" in Madras, Bombay, and Calcutta (now Chennai, Mumbai, and Kolkata respectively). After winning the Battle of Plassey, the company's judicial responsibilities significantly increased, and by 1772, the company's courts had spread outside the three major cities. The old Mughal legal system in those areas was gradually superseded by the corporation throughout this process. The British Crown gained control over company territory in India after the First War of Independence in 1857. The next significant change in the Indian legal system was brought about by the empire. The previous mayoral courts were replaced by the new supreme courts. Through letters of patent, which were permitted under the

³ Legal Theory Lexicon, (Mar. 21, 2004), <http://legaltheorylexicon.blogspot.com/2004/06/legal-theory-lexicon-039-primary-and.html>.

⁴ Ravindra Kumar Singh, Harts's Concept of Law and Justice, Banaras Law Journal 4

Indian High Tribunals Act, which the British parliament approved in 1862, these courts were transformed into the first High Courts. The corresponding high courts were assigned the supervision of lower courts and the enrollment of legal professionals. The "vakils," or advocates, of the Mughal legal system, also changed with the times, though they largely kept up their prior function of serving as client representatives. Indian lawyers were unable to enter the newly established Supreme Courts since only members of Scottish, English, and Irish professional organizations were granted the right to the audience. The Legal Practitioners Act of 1846, which opened up the profession regardless of nationality or religion, was the result of later laws and regulations. The first Legal Commission's establishment marked the official start of law coding. The Indian Penal Code was written, passed into law, and put into effect by 1862 under the direction of its chairman, Thomas Babington Macaulay. The same commission also wrote the Code of Criminal Procedure and numerous additional laws and regulations, such as the Evidence Act of 1872 and the Contracts Act (1872).

Right after independence, a new constitution of independent India was formulated by Dr. B.R Ambedkar who chaired the drafting committee of the constituent assembly. The Constitution of India serves as the supreme law in all executive, legislative, and judicial matters in the nation. The Constitution decisively shifted the course of the system—originally designed to uphold colonial and imperial interests in India—in favor of social welfare. The Constitution specifically aspires to strengthen the most vulnerable elements of society, and this goal is furthered by judicial interpretation. The Indian legal system, which began as a creation of the colonial rulers, has developed into a vital component of the greatest democracy in the world and a pivotal front in the fight to protect constitutional rights for all citizens.⁵

The law has changed greatly throughout the years. Numerous factors have contributed to the evolution and changes in the law over the years. Some of the primary causes are:- literacy, colonial rule, gender equality, progress in society, etc.⁶ It has changed from observing traditions and following religious tenets to following precedents and legislative-made laws. An act that was not an offence a few years ago is now an offence and vice versa. For example, in *Joseph Shine v/s Union Of India*(2018)⁷ the supreme court struck down the law relating to adultery since the law seems to be archaic.

Role of law in the society :

Society needs the rule of law because it establishes a standard of behaviour for its members. It was also created to maintain the balance between the three government parts and give all individuals adequate instructions and order regarding their behaviour. It keeps the world going. Without law, there would be anarchy, survival of the fittest, and man against man.

⁵ Brief History of Law In India, barcouncilofindia <http://www.barcouncilofindia.org/about/about-the-legal-profession/legal-education-in-the-united-kingdom/>.

⁶ Akash Kumar Garg, Evolution of Law in India, lawcian (July 19, 2020), <https://www.lawcian.com/post/evolution-of-law-in-india#:~:text=India%20has%20a%20recorded%20legal,an%20illustrious%20history%20in%20India..>

⁷ *Joseph Shine v. Union of India*, MANU (SC 2018).

Social change is the gradual transformation of cultural and social institutions brought about by human interactions and relationships. This change has a significant effect on society. Every society has changed over time. Through its direct influence on society, the law has a significant indirect impact on social change. On the other hand, the law frequently engages in indirect interactions with fundamental social institutions in a way that establishes a direct link between law and social change.⁸ Since the purpose of the law is to control society, which is continuously changing, we might infer that the law is also evolving.

Reflecting on the Dynamic Nature of Law in Contemporary Society :

India is attempting to instill a more progressive school of thought, including respect for human rights, civil rights, LGBTQ rights, and advancements in science and technology, among other things. The introduction of new schools of thought follows modifications in the Rule of Law. The following rulings of the Supreme Court demonstrate how the law has changed and developed over time in contemporary society:

In the laudable judgment of *X v the Principal Secretary, Health and Family Welfare Department, Government of NCT*⁹, a bench comprising of three supreme court judges, Justice D Y Chandrachud, Justice A S Bopanna, and Justice J B Pardiwala, unanimously decided to permit an unmarried woman to terminate her pregnancy. The 25-year-old appellant who was unmarried and pregnant, which arose out of a consensual relationship, was denied the right to access safe and legal abortion under the provision of Section 3(2)(b) of the Medical Termination of Pregnancy (MTP) Act, 1971¹⁰ and Rule 3(b)(c) of MTP Rules, 2003¹¹. Section 3(2)(b) of the MTP Act, 1971 permits registered medical professionals to terminate pregnancies where the length of the pregnancy is within 20 weeks. Moreover, the two medical professionals must form an opinion that the continuation of the pregnancy would involve risk to the pregnant woman or will cause grave injury to her mental or physical health. It also includes cases where there is a significant chance that, if the child were to be born, it would have severe physical or mental abnormalities. Ms. X was 23 weeks and 5 days pregnant, which made the said section inapplicable in the instant case. The categories of women whose pregnancies may be terminated up to 24 weeks are outlined in Rule 3B. According to the guidelines outlined in the MTP Act, only rape survivors, children, women whose marital status changed during the course of the pregnancy (divorce or death of the spouse), women who are mentally ill, or women who have a foetal deformity are permitted to end the pregnancy. Clearly, unmarried women are not included in the scope of the aforementioned provision. Thereafter, the Delhi Court rejected her plea to access an abortion citing that unmarried women are not included within the ambit of the Act. As the matter was raised in the Supreme Court, the bench comprising three eminent judges, was of the view that the Delhi High Court's interpretation of Rule 3(b), which mentions a woman's "change in marital status" and uses the expressions "widowhood" or "divorce," was

⁸ Kishan Tiwari, Article: Importance of Law in Society, legaldesire <https://legaldesire.com/article-importance-of-law-in-society/>.

⁹ *X v. The Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi & Anr.*, 2022 LiveLaw (SC) 621

¹⁰ Medical Termination of Pregnancy act, 1971 P.E.N.C.O.D.E. § 3 indiakanoon (1971).

¹¹ Medical Termination of Pregnancy rules, 2003 P.E.N.C.O.D.E. § 3 indiacode (2003).

"unduly restrictive." The court observed that a restrictive and narrow interpretation would put it dangerously near to being declared unconstitutional. The court was confronted with the demands of a transformative constitution which must be read in light of the evolution of society. It was held that one should impart a "purposive interpretation to Rule 3B". The court emphasizes that in order to achieve an enactment's intent and purpose, it is important to take evolving societal mores into account while interpreting its provisions. The Court further noted that it would be against the legislature's intent to exclude single and unmarried women from its purview and violative of Article 14 of the Indian constitution. It also noted that as part of the 2021 amendment, the words "married woman" and "husband" were changed to "any woman" and "partner," respectively. The court recognizes that one of its adjudicative duty is to be able to recognize shifting social norms. In the words of Menaka Guruswamy, "*this constitutional gaze, along with the mandate of our "transformative constitution", has resulted in some of the most dynamic decisions by our court.*"¹²

The same bench led by Justice DY Chandrachud held that wives, who conceived out of forced sex by their husbands, will also come within the ambit of "survivors of sexual assault or rape or incest" mentioned in Rule 3B(a) of the Medical Termination of Pregnancy Rules. It also ruled that a woman who wants to terminate her pregnancy under the MTP Act does not have to provide evidence of rape or sexual assault. This dynamic interpretation of the law with respect to the evolving social mores is what sets apart the Apex Court of our country from all other courts of India.

Along similar lines, in the recent case of Deepika Singh v. the Central Administrative Tribunal and Others¹³, the traditional definition of family has been expanded by several key findings made by the Supreme Court. The case arose when the appellant's request for the grant of maternity leave for her sole biological child, was rejected by the Central Administrative Tribunal(CAT) and the High Court on the ground that she had availed child care leave for one of the two children of her spouse from his previous marriage. So any child born to her now would be regarded as a third child. She, therefore, did not qualify for maternity leave under sub-rule (1) of Rule 43's requirement that she has less than two surviving children. Aggrieved by this, she approached the Supreme Court which reversed the order of both the High Court and CAT and ruled that she was eligible for maternity leave and that denying her request would violate the provision of Rule 43. The Apex court noted that the purpose of maternity leave and other gender-specific facilitative measures is to ensure that women are not required to abandon their jobs in order to give birth, which is a normal and necessary part of every woman's life. This purposive interpretation is to be adopted while interpreting the provisions of the law. The judgment authored by Justice D.Y Chandrachud observed that "familial relationships may take the form of domestic, unmarried partnerships or queer relationships" and these familial units may not be typical, but they are just as genuine as the ones that are. Such unusual family

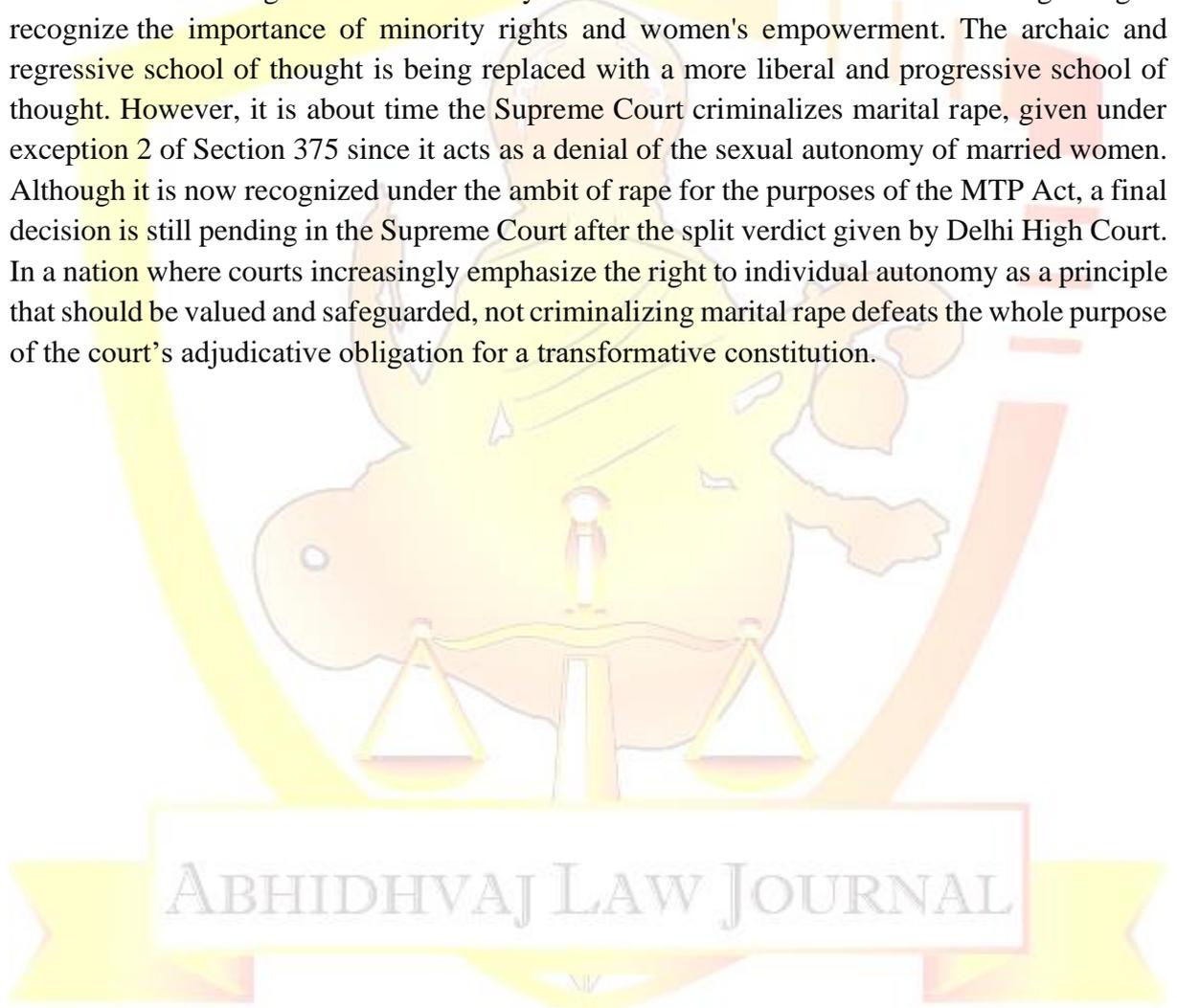
¹² Menaka Guruswamy, A firm foundation for autonomy: SCs landmark judgment on abortions enables the full exercise of womens reproductive choice, TheIndianExpress, (Oct. 15, 2022).

¹³ Deepika Singh v. Central Administrative Tribunal and Others, LiveLaw 718 (SC 2022).

unit manifestations are equally entitled to legal protection as well as the benefits provided by social welfare legislation.¹⁴

CONCLUSION :

The Supreme Court on numerous occasions has emphasized the transformative nature of our constitution. While interpreting statutes, it takes into account the changing social circumstances and employs legal interpretation strategies that permit a statute to develop over time in a way that is constitutionally justified. Our Supreme Court's readiness to consider evolving societal circumstances distinguishes it from many other constitutional courts. India is beginning to recognize the importance of minority rights and women's empowerment. The archaic and regressive school of thought is being replaced with a more liberal and progressive school of thought. However, it is about time the Supreme Court criminalizes marital rape, given under exception 2 of Section 375 since it acts as a denial of the sexual autonomy of married women. Although it is now recognized under the ambit of rape for the purposes of the MTP Act, a final decision is still pending in the Supreme Court after the split verdict given by Delhi High Court. In a nation where courts increasingly emphasize the right to individual autonomy as a principle that should be valued and safeguarded, not criminalizing marital rape defeats the whole purpose of the court's adjudicative obligation for a transformative constitution.



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¹⁴ Family May Take Form Of Unmarried Or Queer Relationships, Atypical Families Also Entitled To Protection Of Law : Supreme Court, LiveLaw (Aug. 29, 2022), <https://www.livelaw.in.elibrary.nirmauni.ac.in/top-stories/family-may-take-form-of-unmarried-or-queer-relationships-atypical-families-also-entitled-to-protection-of-law-supreme-court-207716>.